

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN MCOWEN	:	
	:	Civil Action
Plaintiff,	:	
	:	No. 06-2617
v.	:	
	:	
VILLA JOSEPH MARIE	:	
	:	
Defendant.	:	

MEMORANDUM

Presently pending is Plaintiff's Motion to Quash Subpoenas Duces Tecum (Docket No. 20), and Defendant's response thereto. For the reasons stated below, Plaintiff's Motion will be denied.

Factual and Procedural Background

Plaintiff is an adult citizen who currently resides in Bucks County, Pennsylvania. Defendant is a private catholic girls high school located in Bucks County, Pennsylvania. Plaintiff's Complaint alleges employment discrimination pursuant to the Age Discrimination in Employment Act (hereinafter "ADEA"), 29 U.S.C. § 626(b), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq., as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981. Plaintiff's Complaint also alleges pendant state law claims. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343 and 1367.

Plaintiff's Complaint includes six (6) Counts: (1) Age Discrimination under the ADEA; (2) Gender Discrimination under Title VII; (3) Breach of the Pennsylvania Wage Payment and Collection Law (hereinafter "PA WPCL") for failure to reimburse; (4) Breach of Contract; (5) Wrongful Discharge; and (6) Age and Gender Discrimination under the Pennsylvania Human

Relations Act (hereinafter “PHRA”).

In his Motion, Plaintiff is seeking to quash subpoenas duces tecum dated December 18, 2006 and served upon Philmont Guidance Center, Jacqueline Keiser of the Philmont Guidance Center, Dr. Schlessel of the Philmont Guidance Center, Ron Lewis Associates and Dr. R. Hallock Williams of Ron Lewis Associates. The subpoenas command the above persons to produce all medical records, psychiatric treatments, rehabilitation notes, and related information which pertain to the Plaintiff in any manner. Plaintiff asserts that the documents sought are irrelevant, overly broad, and would violate physician-patient privilege as well as the constitutional doctrine of privacy.

In its response, Defendant asserts that the subpoenas should not be quashed because the documents sought are relevant since Plaintiff places his mental history at issue, and Plaintiff’s allegations prevent the invocation of physician-patient privilege.

Discussion

It is well established that physician-patient information is privileged unless an exception applies. Federal Rule of Civil Procedure 45(c)(3)(A)(iii) states that a court may quash a subpoena if the subpoena requires disclosure of privileged information and no waiver or other exception applies. Rule 26(b)(1) provides that parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Fed. R. Civ. P. 26(b)(1)(2007). Pennsylvania’s physician-patient privilege statute provides the following:

No physician shall be allowed, in any civil matter, to disclose any information which he acquired in attending the patient in a

professional capacity, and which was necessary to enable him to act in that capacity, which shall tend to blacken the character of the patient, without consent of said patient, except in civil matters brought by such patient, for damages on account of personal injuries.

42 Pa. C.S.A. §5929 (2007)(emphasis added).

In the instant case, Plaintiff's mental history is at issue. In his Complaint, Plaintiff alleges to have suffered emotional distress as a result of Defendant's illegal actions. Moreover, during his deposition, Plaintiff elaborates on the mental anguish and severe depression caused by his being terminated by Defendant. While Plaintiff does not claim that his mental health was the reason for his termination by Defendant, Plaintiff is seeking damages for the emotional distress, mental anguish, and severe depression caused by Defendant's actions. As such, Plaintiff's mental history is relevant to ascertain whether Defendant's actions actually caused Plaintiff's mental anguish. Moreover, privilege is waived because Plaintiff himself placed his mental history at issue. As such, Plaintiff's Motion to Quash Subpoenas Duces Tecum will be denied.

An appropriate order follows.

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JOHN MCOWEN	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 06-2617
v.	:	
	:	
VILLA JOSEPH MARIE	:	
	:	
Defendant.	:	

ORDER

Presently pending is Plaintiff's Motion to Quash Subpoenas Duces Tecum (Docket No. 20), and Defendant's response thereto. **AND NOW**, this 31st day of January, 2007, **IT IS HEREBY ORDERED THAT** Plaintiff's Motion to Quash (Docket No. 20) is **DENIED**.

BY THE COURT:

s/ Clifford Scott Green, S.J.

CLIFFORD SCOTT GREEN, S.J.